



# The Confederated Tribes of the Colville Reservation

History/Archaeology Program  
P.O. Box 150, Nespelem, WA 99155

(509) 634-2693  
FAX: (509) 634-2694



Secretary Marlene Dortch  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

HA# U18-105  
18.0123

RE: Confederated Tribes of the Colville Reservation Opposition to Draft Report and Order  
(WT Docket No. 17-79)

Dear Chairman Pai and Members of the Commission:

The Confederated Tribes of the Colville Reservation (Colville Confederated Tribes [CCT]) appreciate the opportunity to submit comments for the record pertaining to WT Docket No. 17-79, in the matter of *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*. We write to state our concerns regarding the Draft Report and Order, released on March 1, 2018, that purports to narrow the obligations of the Federal Communications Commission (FCC) under the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) and restricts tribal rights secured by those laws. The draft order's approach will be detrimental to tribal governments, tribal cultural and historic resources and do very little to encourage deployment of wireless service to areas, like ours, that need it most.

Fifteen years ago, the FCC stated that it was impractical for it to consult on thousands of existing, new and proposed cell sites, despite its obligation to do so. In response, Indian Country endorsed the Tower Construction Notification System (TCNS) as an elegant solution that facilitated the telecommunications industry working directly with tribal nations to address issues of concern so that it would be unnecessary, in nearly all cases, for the FCC to engage in extensive consultation. The alternative, which will be the outcome if the current order is approved, is that tribal nations will demand direct consultations with the FCC on potentially hundreds of larger tower sites, a far slower process than the tribal-industry process.

In addition, as articulated in the Comments for Record submitted by the CCT on August 9, 2017, to the House Committee on Natural Resources, Subcommittee on Oversight and Investigations, regarding their oversight hearings on the topic of "Federal Natural Resources Laws Gone Astray," the Commission has a trust responsibility to tribal nations, not to the wireless industry. The CCT maintains that it is a violation of that responsibility for the Commission to have issued this Draft Report and Order while having held largely informal listening sessions, briefings, and meetings that do not satisfy the parameters of formal government-to-government consultation.

The CCT further maintains that, as currently defined within Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 300101 et seq. (NHPA), a federal undertaking is "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval" (36 CFR 800.16(y)). The Draft Report and Order seeks to "Amend Commission rules to clarify that the deployment of small wireless facilities by private parties does not constitute either a "federal

undertaking” within the meaning of NHPA or a “major federal action” under NEPA, meaning that neither statute’s review process would be mandated for such deployments.” The Commission does not have the legal authority to unilaterally flout either the intent of Congress or its mandates. The CCT maintains that the deployment of small scale wireless facilities is a federal undertaking, and must be addressed as such within the context of historic preservation review. The CCT would not object to formal consultation with the Commission regarding the crafting of an expedited review process for these types of undertakings under NHPA, but categorically rejects the reclassification of small scale wireless facility deployments.

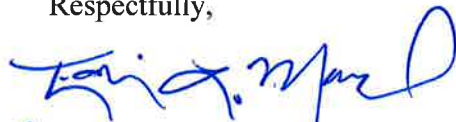
Finally, the CCT adheres to the guidance provided in the 2001 memorandum, *Fees in the Section 106 Process*, issued by the Executive Director of the Advisory Council on Historic Preservation (ACHP). As stated in that memorandum:


When, during the identification phase of the Section 106 process, an agency or applicant seeks to identify historic properties that may be significant to an Indian tribe, it may ask for specific information and documentation regarding the location, nature, and condition of individual sites, or actually request that a survey be conducted by the tribe. In doing so, the agency essentially asks the tribe to fulfill the role of a consultant or contractor. In such cases, the tribe would seem to be justified in requiring payment for its services, just as any other contractor.

This memorandum has been subsequently incorporated by reference into the ACHP’s 2008 handbook, *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*, and the 2014 *ACHP Policy Statement Regarding Federal Relationships with Tribal Historic Preservation Officers*. The CCT concurs that the NHPA imposes no mandate on federal agencies to pay up-front fees to tribes for tribal participation in the consultative process, and that, as stated in Provision 117 of the Draft Report and Order, “so long as the underlying obligation to make reasonable and good faith efforts to identify historic properties is satisfied, the applicant is not bound to any particular method of gathering information.” Nevertheless, it is the position of the CCT that when an applicant requests specific information or documentation from a tribe, particularly when that information is tribal cultural patrimony, that tribe is placed in the position of serving as a cultural resources consultant or contractor, conducting research outside of the parameters of the government-to-government consultation schema. Therefore, that tribe would be entitled to reasonable compensation for their research and expertise, comparable to that which any other cultural resources contractor would be entitled.

In closing, we again thank you for the opportunity to submit these Comments for Record, and for consulting with the Confederated Tribes of the Colville Reservation.

Respectfully,



 Dr. Michael Marchand  
Chairman, Colville Business Council  
Confederated Tribes of the Colville Reservation